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COOLEY GODWARD, LLP			EXAMINER	
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PALO ALTO, CA 94306			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Og/888,049 FRANCISET AL Examiner							
### Examinar David A Lambertson 1938 ### The MAILING DATE of this communication appears on the cover sheet with the correspondence address ### Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of them may be available under the provisions of 37 CPR 1.13(b), in no event, however, may a reply be timely filled I the period for equily period address his best than time; of 30 days, a reply within the studied primitisment of thinly (30) days will be considered timely. If NO period for equily period address the set best and the period will apply and will equile SIX (5) MONTH's from the mailing date of this communication. Provided the reply applied above, the monthmus detactory period will apply and will equile SIX (6) MONTH's from the mailing date of this communication is reply applied above, the mailing date of this communication, even if kinely filled, may reduce a nity and provided to the mailing date of this communication. Provided in the mailing date of the communication, even if kinely filled, may reduce a nity and provided in the mailing date of the communication is made placed to the mailing date of the communication. Provided in the mailing date of the communication is made placed to the mailing date of the communication is made placed to the mailing date of the communication is made and placed to the mailing date of the communication is not provided and placed and		Application No.	Applicant(s)				
David A. Lambertson 1636	Office Action Summer	09/888,049	FRANCIS ET AL.				
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THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under be provided or disconnected in the part of the may be available under be provided or disconnected in the SR (6) MONTHS from the mailing date of this communication: I NO particle or reply is genified above, the machine date of this communication: I NO particle or reply is genified above, the machine that substitute privating and will always (6) MONTHS from the mailing date of this communication. Failure to reply within the set or octanded private for reply vill, by statular, cause the application to become ARANDONED (38 U.3.C. § 133). Any reply received by the Office author the time remove mailing date of this communication, even if timely filed, may reduce any Status 1) N Responsive to communication(s) filled on 21 June 2001. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-59 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 7) Claim(s) is/are abjected to. 8) Claim(s) 1-59 are subject to restriction and/or election requirement. Application Papers 9) The procrision is objected to by the Examiner. 10) The drawing(s) filed on is/are: a coepled or b objected to by the Examiner. Application Papers 11) The proposed drawing correction filed on is/are: a coepled or b objected to by the Examiner. 12) The proposed drawings are required in reply to this Office action. 12) The proposed drawings are required in reply to this Office action. 12) All b D Some objected to by the Examiner. Priority under 35 U.S.C. § 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 2) Certified copies of t		ears on the cover sheet with the c	orrespondence address				
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-42, 45-52 and 58-59, drawn to a transposon cassette, vector containing the cassette and host cell containing the vector or cassette, classified in class 435, subclass 320.1.
- II. Claims 43-44, drawn to a method of modifying an organism using a vector containing a transposon cassette, classified in class 435, subclass 473.
- III. Claim 53, drawn to a method of identifying active host cell promoters in a microorganism using a vector containing a transposon cassette, classified in class 435, subclass 4.
- IV. Claim 54, drawn to a method of identifying active host cell promoters using animals, classified in class 435, subclass 455.
- V. Claim 55, drawn to a method of screening compounds for pharmacological effectiveness against a microorganism, classified in class 435, subclass 7.95.
- VI. Claims 56-57, drawn to a method of monitoring the proliferation of a microorganism of interest, classified in class 435, subclass 29.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II-VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the

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product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process as evidenced by the multiple uses it has in inventions II-VI; for instance it can be used to screen compounds for pharmacological activity against a microorganism or it can be used to identify active host-cell promoters.

Inventions II-VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions each have different effects and/or modes of operations, and are not disclosed as capable of being used together. Specifically, Group II (a method of genetically modifying an organism), Groups III-IV (each being a method of identifying active host cell promoters), Group V (a method for screening pharmacological agents) and Group VI (a method of monitoring the proliferation of microorganisms) each have different outcomes (with the obvious exception of Groups II-IV which have the same outcome as each other), and therefore have different effects. Furthermore, each of these groups requires different method steps to obtain the claimed effect, and therefore have different modes of operation. This is also true as it regards Groups III and IV, because the method of group IV requires steps involving the infection of an animal, wherein the steps are not required to practice the method of Group III. Because these groups have one or both of different effects and different modes of operations, the inventions are patentably distinct.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Furthermore, the non-patent literature searches required for each of these inventions are not co-extensive, hence said searches would be burdensome. Therefore restriction for examination purposes as indicated is proper

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Lambertson whose telephone number is (703) 308-8365. The examiner can normally be reached on 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on (703) 305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

David A. Lambertson June 27, 2003

PATENT EXAMINER

DETAIL O. PE